

AMENDED IN ASSEMBLY APRIL 10, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 1008

Introduced by Assembly Member Charles Calderon

February 22, 2007

An act to amend ~~Section 676 of~~ Sections 12800 and 12805 of, and to repeal Section 116.5 of, the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 1008, as amended, Charles Calderon. ~~Insurance renewal.~~
Insurance: vehicle service contracts.

Existing law provides that certain express warranties constitute automobile insurance unless certain requirements are met.

This bill would delete those provisions.

Existing law defines "vehicle service contract" for purposes of provisions relating to sellers of vehicles.

This bill would change the definition of "vehicle service contract" to include only those agreements that have a term of at least one year that promise routine maintenance, and agreements that promise certain repair, replacement, or maintenance, as specified.

Under existing law, certain types of agreements or contracts do not constitute insurance, including a maintenance service contract with a term of one year or less that does not contain provisions for indemnification and does not provide a discount to the purchaser, as specified.

This bill would delete that provision and instead provide that an agreement promising only routine maintenance that does not constitute a vehicle service contract does not constitute insurance.

Existing law provides that after an insurance policy insuring certain types of property, as specified, has been in effect for 60 days, or if that policy is a renewal, no notice of cancellation is effective unless it is based on the occurrence of one or more of listed factors, including nonpayment of premium. This nonpayment of premium includes nonpayment of any additional premiums, calculated in accordance with the current rating manual of the insurer, justified by a physical change in the insured property or a change in its occupancy or use.

This bill would revise the above provision to also require that the amount calculated in accordance with the current rating manual of the insurer also be approved by the commissioner.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 116.5 of the Insurance Code is repealed.~~
- 2 ~~116.5.—An express warranty warranting a motor vehicle~~
- 3 ~~lubricant, treatment, fluid, or additive that covers incidental or~~
- 4 ~~consequential damage resulting from a failure of the lubricant,~~
- 5 ~~treatment, fluid, or additive, shall constitute automobile insurance,~~
- 6 ~~unless all of the following requirements are met:~~
- 7 ~~(a) The obligor is the primary manufacturer of the product. For~~
- 8 ~~the purpose of this section, “manufacturer” means a person who~~
- 9 ~~can prove clearly and convincingly that the per unit cost of owned~~
- 10 ~~or leased capital goods, including the factory, used to produce the~~
- 11 ~~product, plus the per unit cost of nonsubcontracted labor used to~~
- 12 ~~produce the product, exceeds twice the per unit cost of raw~~
- 13 ~~materials used to produce the product. “Manufacturer” also means~~
- 14 ~~a person who has formulated or produced, and continuously offered~~
- 15 ~~in this state for more than nine years, a motor vehicle lubricant,~~
- 16 ~~treatment, fluid, or additive.~~
- 17 ~~(b) The commissioner has issued a written determination that~~
- 18 ~~the obligor is a manufacturer as defined in subdivision (a). An~~
- 19 ~~obligor shall provide the commissioner with all information,~~
- 20 ~~documents, and affidavits reasonably necessary for this~~
- 21 ~~determination to be made. Approval by the commissioner shall be~~
- 22 ~~obtained prior to January 1, 2004, or prior to the issuance of a~~
- 23 ~~warranty subject to this section, whichever is later. If the~~
- 24 ~~commissioner determines that the obligor is not a manufacturer,~~

1 the obligor may obtain a hearing in accordance with Chapter 4.5
2 (commencing with Section 11400) of Part 1 of Division 3 of Title
3 2 of the Government Code.

4 (e) ~~The agreement covers only damage incurred while the~~
5 ~~product was in the vehicle.~~

6 (d) ~~The agreement is provided automatically with the product~~
7 ~~at no extra charge.~~

8 *SEC. 2. Section 12800 of the Insurance Code is amended to*
9 *read:*

10 12800. The following definitions apply for purposes of this
11 part:

12 (a) “Motor vehicle” means a self-propelled device operated
13 solely or primarily upon land and may include both self-propelled
14 motor homes or recreational vehicles, non-self-propelled camping
15 and recreational trailers, off-road vehicles, and trailers designed
16 to transport off-road vehicles. However, “motor vehicle” shall not
17 include a self-propelled vehicle, or a component part of such a
18 vehicle, that has any of the following characteristics:

19 (1) Has a gross vehicle weight rating of 30,000 pounds or more,
20 and is not a recreational vehicle as defined by Section 18010 of
21 the Health and Safety Code.

22 (2) Is designed to transport more than 15 passengers, including
23 the driver.

24 (3) Is used in the transportation of materials considered
25 hazardous pursuant to the Hazardous Materials Transportation Act
26 (49 U.S.C. Sec. 5101 et seq.), as amended.

27 (b) “Watercraft” means a vessel, as defined in Section 21 of the
28 Harbors and Navigation Code, and may include any
29 non-self-propelled trailer used to transport such watercraft upon
30 land.

31 (c) (1) “Vehicle service contract” means a contract or agreement
32 for a separately stated consideration and for a specific duration to
33 repair, replace, or maintain a motor vehicle or watercraft, or to
34 indemnify for the repair, replacement, or maintenance of a motor
35 vehicle or watercraft, necessitated by an operational or structural
36 failure due to a defect in materials or workmanship, or due to
37 normal wear and tear. ~~A~~

38 (2) A vehicle service contract may also provide for the incidental
39 payment of indemnity under limited circumstances only in the
40 form of the following additional benefits: coverage for towing,

1 substitute transportation, emergency road service, rental car
2 reimbursement, ~~road hazard protection~~, reimbursement of
3 deductible amounts under a manufacturer's warranty, and
4 reimbursement for travel, lodging, or meals. ~~“Vehicle~~

5 (3) *“Vehicle service contract” also includes an agreement of a*
6 *term of at least one year, for separately stated consideration, that*
7 *promises repairs at a discount to the purchaser for any combination*
8 *of parts and labor in excess of 20 percent routine maintenance.*

9 (4) *“Vehicle service contract” also includes any agreement,*
10 *provided with or without separate consideration, that promises to*
11 *repair, replace, or maintain a motor vehicle or watercraft, or to*
12 *indemnify for the repair, replacement, or maintenance of a motor*
13 *vehicle or watercraft, conditioned upon the use of a specific brand*
14 *or brands of lubricant, treatment, fluid, or additive. A person who*
15 *has formulated or produced, and continuously offered in this state*
16 *for more than 15 years, a motor vehicle lubricant, treatment, fluid,*
17 *or additive, is eligible to apply to the commissioner for a written*
18 *exemption from the provisions of this part, which exemption shall*
19 *be granted upon satisfactory proof.*

20 (5) *Notwithstanding Section 116, and paragraphs (1) and (2)*
21 *of this subdivision, a vehicle service contract also includes one or*
22 *more of the following:*

23 (A) *An agreement that promises the repair or replacement of a*
24 *tire or wheel necessitated by wear and tear, defect, or damage*
25 *caused by a road hazard. However, a warranty provided by a tire*
26 *or wheel manufacturer is exempt from the requirements of this*
27 *part. A warranty provided by a tire or wheel distributor or retailer*
28 *is exempt from the requirements of this part as long as the warranty*
29 *covers only defects in the material or workmanship of the tire or*
30 *wheel.*

31 (B) *An agreement that promises the repair or replacement of*
32 *glass on a vehicle necessitated by wear and tear, defect, or damage*
33 *caused by a road hazard. However, a warranty provided by a*
34 *vehicle glass manufacturer is exempt from the requirements of this*
35 *part. A warranty provided by a vehicle glass distributor or retailer*
36 *is exempt from the requirements of this part as long as the warranty*
37 *covers only defects in the material or workmanship of the vehicle*
38 *glass.*

39 (C) *An agreement that promises the removal of a dent, ding, or*
40 *crease without affecting the existing paint finish using paintless*

1 *dent repair technology, and which expressly excludes the*
2 *replacement of vehicle body panels, sanding, bonding, or painting.*

3 (d) “Service contract administrator” or “administrator” means
4 any person, other than an obligor, who performs or arranges,
5 directly or indirectly, the collection, maintenance, or disbursement
6 of moneys to compensate any party for claims or repairs pursuant
7 to a vehicle service contract, and who also performs or arranges,
8 directly or indirectly, any of the following activities with respect
9 to vehicle service contracts in which a seller located within this
10 state is the obligor:

11 (1) Providing sellers with service contract forms.

12 (2) Participating in the adjustment of claims arising from service
13 contracts.

14 (e) “Purchaser” means any person who purchases a vehicle
15 service contract from a seller.

16 (f) “Seller” means either of the following:

17 (1) With respect to motor vehicles, a dealer or lessor-retailer
18 licensed in one of those capacities by the Department of Motor
19 Vehicles and who sells vehicle service contracts incidental to his
20 or her business of selling or leasing motor vehicles.

21 (2) With respect to watercraft, a person who sells vehicle service
22 contracts incidental to that person’s business of selling or leasing
23 watercraft vehicles.

24 (g) “Obligor” means the entity legally obligated under the terms
25 of a service contract.

26 *SEC. 3. Section 12805 of the Insurance Code is amended to*
27 *read:*

28 12805. (a) Notwithstanding Sections 103 and 116, the
29 following types of agreements shall not constitute insurance:

30 (1) A vehicle service contract that does each of the following:

31 (A) Names as the obligor a motor vehicle manufacturer or
32 distributor licensed in that capacity by the Department of Motor
33 Vehicles, or a watercraft manufacturer.

34 (B) Covers only motor vehicles or watercraft manufactured,
35 distributed, or sold by that obligor.

36 (2) A vehicle service contract in which the obligor is a seller,
37 provided that the obligor complies with all provisions of this part
38 except Section 12815.

(3) A vehicle service contract sold by a seller in which the obligor is a party other than the seller, provided that the obligor complies with all provisions of this part.

(4) An agreement in which the obligor is a motor vehicle or watercraft part manufacturer, distributor, or retailer, that covers no more than the following items:

(A) The repair or replacement of a part manufactured, distributed, or retailed by that obligor.

(B) Consequential and incidental damage resulting from the failure of that part.

(5) An agreement in which the obligor is a repair facility, that is entered into pursuant and subsequent to repair work previously performed by that repair facility, and that is limited in scope to the following:

(A) The repair or replacement of the part that was previously repaired.

(B) Consequential and incidental damage resulting from the failure of that part.

~~(6) A maintenance service contract with a term of one year or less that does not contain provisions for indemnification and does not provide a discount to the purchaser for any combination of parts and labor in excess of 20 percent. An agreement promising only routine maintenance that does not constitute a vehicle service contract.~~

(b) The types of agreements described in paragraphs (4), (5), and (6) of subdivision (a) are exempt from all provisions of this part.

(c) Vehicle service contracts described in paragraph (1) of subdivision (a) are exempt from the provisions of Sections 12815, 12830, 12835, and 12845.

~~SECTION 1. Section 676 of the Insurance Code is amended to read:~~

~~676. After a policy specified in Section 675 has been in effect for 60 days, or, if the policy is a renewal, effective immediately, no notice of cancellation shall be effective unless it is based on the occurrence, after the effective date of the policy, of one or more of the following:~~

~~(a) Nonpayment of premium, including nonpayment of any additional premiums, calculated in accordance with the current rating manual of the insurer, as approved by the commissioner,~~

1 justified by a physical change in the insured property or a change
2 in its occupancy or use.

3 ~~(b) Conviction of the named insured of a crime having as one~~
4 ~~of its necessary elements an act increasing any hazard insured~~
5 ~~against.~~

6 ~~(c) Discovery of fraud or material misrepresentation by either~~
7 ~~of the following:~~

8 ~~(1) The insured or his or her representative in obtaining the~~
9 ~~insurance.~~

10 ~~(2) The named insured or his or her representative in pursuing~~
11 ~~a claim under the policy.~~

12 ~~(d) Discovery of grossly negligent acts or omissions by the~~
13 ~~insured or his or her representative substantially increasing any of~~
14 ~~the hazards insured against.~~

15 ~~(e) Physical changes in the insured property which result in the~~
16 ~~property becoming uninsurable.~~